

STATE OF WISCONSIN

-vs-

Plaintiff,

DA Case No.: 2009WK002244

Assigned DA/ADA: Brad D. Schimel

Agency Case No.:

Mark R Staley
1305 East Roberta Avenue
Waukesha, WI 53186
DOB: 11/28/1964
Sex/Race: M/
Eye Color:
Hair Color:
Height:
Weight:
Alias:

Court Case No.:
ATN:

Criminal Complaint

Defendant,

Gary Wachtl of the Department of Revenue, State of Wisconsin, being first duly sworn on oath, upon information and belief, states that:

Count 1: THEFT - MOVABLE PROPERTY (> \$2500 - \$5000)

The above-named defendant between January 1, 2003, and December 31, 2007, at 1305 East Roberta Avenue, in the City of Waukesha, Waukesha County, Wisconsin, did intentionally retain possession of movable property of the State of Wisconsin Department of Revenue, having a value greater than \$2500 but less than \$5000, without consent, and with intent to permanently deprive the owner of possession of the property, contrary to sec. 943.20(1)(a) and (3)(bf), 939.50(3)(i) Wis. Stats., a Class I Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than three (3) years and six (6) months, or both.

PROBABLE CAUSE:

And prays that the defendant be dealt with according to law; that the basis for complainant's charge of such offense is: Based upon the reports of Special Agent Wachtl of the State of Wisconsin Department of Revenue Criminal Investigation Section.

Said reports indicate that on May 8, 2007, Mark Staley, the above-named defendant, applied for a seller's permit on an Application for Business Tax Registration form. The defendant was self employed until August of 2008, when he took employment with a company. The defendant filed a Wisconsin sales tax return with the Department of Revenue in 2008, however, did not file any sales tax return in 2007.

Said reports further indicate that based upon the failure of the defendant to file a sales tax return for 2007, a field auditor was assigned to conduct an audit. In the course of the audit, the investigator learned the following information from the defendant and his accountant. The defendant reported that he operated several businesses, including one called Custom Detailing L.L.C., and another called Diversified Maintenance Group, L.L.C. He said the nature of his business was detailing of commercial trucks through April of 2002, and Peterbilt of Wisconsin was his largest customer. He then detailed aircraft from 2001 through September of 2005 with Cessna as his largest customer. In

the fall of 2005, he changed the business name from Custom Detailing to Diversified Maintenance Group and began providing landscaping, snowplowing and office cleaning services.

Said reports further indicate that the defendant reported that he jointly owned his residence at 1305 East Roberta Avenue with his wife, and admitted that he had collected sales tax on sales where it was appropriate, but did not remit the sales tax to the state. He believed that tax was indicated separately on sales invoices and that he charged sales tax, except when an individual provided him with a tax exempt form. The defendant further stated that after collecting sales tax, he began to run into problems with being short on other business bills, and used the sales tax money that he collected to pay those other bills. He admitted that he was "robbing Peter to pay Paul". He did assert that he was not using the money to live luxuriously, and did not take vacations or buy fancy cars with the money. He did concede that he had not submitted sales tax returns between 2003 and 2007, even though the returns were prepared by his accountant for the years 2005, 2006, and 2007. He stated that, since he did not have the money, he made the decision not to send in the returns. Said reports further indicate that the audit of the business records revealed that a total of \$6,675.34 in sales tax should have been collected. The audit further revealed that \$2,972.26 of sales tax was never collected from sales transactions in which it should have been collected. The remaining \$3,703.08 was sales tax that was actually collected, but not remitted to the state. Those sales tax obligations were all between the period of January 1, 2003, and December 31, 2007.

Said reports further indicate that in the business records for Diversified Maintenance Group, L.L.C., there is an account item entitled Sales Tax Payable. The ledger reflected that the defendant was aware as far back as 2000 that he owed sales tax. The ledger read as follows:

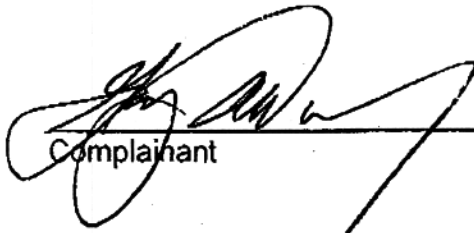
12/30/01	\$1,794.19
12/31/01	\$3,761.31
12/31/02	\$4,630.89
12/31/03	\$5,359.13
12/31/04	\$5,294.10
12/31/05	\$5,678.40
12/31/06	\$9,451.55

Those numbers kept in that ledger column were higher than what the auditor found in examining the business records, but more significantly, they reflect that the defendant was aware that he was responsible for remitting sales tax to the state. In summary, the total sales tax that is identified as having been collected, but not remitted to the state between January 1, 2003, and December 31, 2007, was \$3,703.08. That amount was made up of \$3,694.90 in state sales tax and \$68.18 of stadium tax.

Said reports further indicate that Section 77.52 (2)(a)10, Wisconsin Statutes, imposes sales tax on the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of tangible personal property. Therefore, the gross receipts from the cleaning and maintenance of aircraft and trucks were taxable. Section 77.52 (2)(a)20, Wisconsin Statutes, imposes sales tax on landscaping and lawn maintenance services.


Said reports further indicate that Section 77.60 (11), Wisconsin Statutes, provides that the intentional failure or refusal to pay over sales tax money collected as state sales tax or county or stadium sales tax is punishable as theft under Section 943.20, Wisconsin Statutes.

Based on the foregoing, the complainant believes this complaint to be true and correct.


Complainant

Subscribed and sworn to before me,
and approved for filing on:

this 22 day of February, 2011


Assistant/Deputy/District Attorney
State Bar # 1013783

BDS:jad

EXT=CODE 3